4013.

SUPREME COURT OF THE UNITED STATES.

No. 126.

JOHN G. DESHLER, PLAINTIFF IN ERROR,

vs.

GEORGE C. DODGE.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE DISTRICT OF OHIO.

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GIDEON, print.

At a circuit court of the United States of America, within and for the seventh circuit and district of Ohio, begun and held at the court-house, in the city of Columbus, on the third Tuesday in the month of October, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the seventy-eighth: Before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of said court.

Among other were the following proceedings, to wit:

JOHN G. DESHLER, plaintiff, vs. GEORGE C. DODGE, defendant. } Action of replevin.

Be it remembered, that heretofore, to wit, on the 26th day of March, in the year of our Lord one thousand eight hundred and fifty-three, came the plaintiff by his attorneys, and filed in the clerk's office of said court his præcipe, with an affidavit thereto attached, against the said defendant, in the words and figures following, to wit:

Circuit court of the United States, for the district of Ohio.

Præcipe.

JOHN C. DESHLER, a resident and citizen of the State of New York, vs. GEORGE C. DODGE, a citizen and resident in the State of Ohio. } In replevin. Damages $25,000.

Issue a writ of replevin for the following goods and chattels, to wit: A quantity of bank bills, of various denominations, consisting of fives, tens, twenties, and fifties, given for the payment, in the aggegate, of the sum of ten thousand five hundred and eighty dollars, being the same bank bills taken by the said George C. Dodge, from the City Bank of Cleveland, on the 26th day of March, 1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fours, fives, ten, twenties, fifties, and hundreds, and given for the payment, in the aggregate, for the sum of seven thousand nine hundred sixty-five dollars, being the same bank bills taken by the said George C. Dodge, from the Merchants' Bank of Cleveland, on the 26th day of March, A. D. 1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fives, tens, twenties, and fifties, and hundreds, and given for the payment, in the aggregate, of the sum of nine thousand two hundred and sixteen dollars, being the same bank bills taken by the said George C. Dodge, from the Canal Bank of Cleveland, on the 26th day of March, A. D.

1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, and given for the payment, in the aggregate, of the sum of eleven thousand two hundred and twenty dollars, being the same bank bills taken by the said George C. Dodge, from the Commercial Bank of Cleveland, on the 26th day of March, A. D. 1853.

BISHOP, BACKUS, & NOBLE,
Plaintiff's attorneys.

FOOTE & NEWTON, *Attorneys.*
MOSES KELLY,
SAM'L WILLIAMS.

To the clerk of said circuit court.
March 26th, 1853.

John G. Deshler, plaintiff in the case in the annexed præcipe named, being first duly sworn, does depose and say: That he has good right to the possession of the goods and chattels described in the annexed præcipe, and that the same are wrongfully detained by the said George C. Dodge, named as defendant in said præcipe; and that the said goods and chattels were not taken in execution on any judgment against the said John G. Deshler, nor for the payment of any tax, fine, or amercement assessed against the said Deshler, nor by virtue of any writ of replevin, or any other mesne or final process whatsoever issued against the said Deshler. Said Deshler further makes oath and says, that he is a citizen and resident of the State of New York, and that the said George C. Dodge is a citizen and resident of the State of Ohio.

JOHN G. DESHLER.

U. S. AMERICA,
District of Ohio, ss.

Personally appeared before me, at Cleveland, O., this 26th day of March, 1853, *before me*, R. C. Parsons, a U. S. commissioner for the district of Ohio, and made oath, that the above affidavit by him subscribed is wholly and entirely true, to the best of his knowledge and belief. Before me,

R. C. PARSONS, [SEAL.]
U. S. Commissioner.

And thereupon the following writ of replevin issued out of the clerk's office of said court in this cause, to wit:

Writ.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you, that without delay you cause to be replevied, unto John G. Deshler, a citizen of, and resident in, the State of New

York, the following goods and chattels, to wit: A quantity of bank bills, of various denominations, consisting of fives, tens, twenties, and fifties, and given for the payment of, in the aggregate, *of* the sum of ten thousand five hundred and eighty dollars, being the same bank bills taken by George C. Dodge from the City Bank of Cleveland, on the 26th day of March, 1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, and threes, fours, fives, tens, twenties, fifties, and hundreds, and given for the payment, in the aggregate, of the sum of seven thousand nine hundred and sixty-five dollars, being the same bank bills taken by the said George C. Dodge, from the Merchants' Bank of Cleveland, on the 26th day of March, A. D. 1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, and given for the payment, in the aggregate, of the sum of nine thousand two hundred and sixteen dollars, being the same bank bills taken by the said George C. Dodge, from the Canal Bank of Cleveland, on the 26th day of March, A. D. 1853. Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, and given for the payment, in the aggregate, of the sum of eleven thousand two hundred and twenty dollars, being the same bank bills taken by the said George C. Dodge from the Commercial Bank of Cleveland, on the 26th day of March, A. D. 1853; which George C. Dodge, a citizen and resident in the State of Ohio, wrongfully detains from the said John G. Deshler, as is said. And also that you summon the said George C. Dodge, if he shall be found in your bailiwick, to be and appear before the judges of the circuit court of the United States, for the district of Ohio, at Columbus, on the third Tuesday in the month of April next, to answer unto the said John G. Deshler, for the unlawful detention of the goods and chattels aforesaid—damages twenty-five thousand dollars; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States this 26th day of March, 1853, and in the 77th year of the independence of U. S. of America.

[SEAL.]

WM. MINER, *Clerk*.

And thereupon, at the April term of said court, viz., on the third Tuesday of April, in the year of our Lord one thousand eight hundred and fifty-three, being the return day of the foregoing writ, comes into court here the marshal of the district of Ohio aforesaid, to whom the writ aforesaid was in form aforesaid directed, and makes return thereof to the court here thus endorsed, to wit:

UNITED STATES OF AMERICA,
District of Ohio, ss:

CLEVELAND, OHIO, *March 26th*, 1853.

By virtue of this writ of replevin, I, this day, in the presence of Lambert White and W. I. Gordon, replevied the goods and chattels

described in the within writ, and at the same time I caused the value of the same to be ascertained, on the oaths of T. C. Severance and of J. F. Tainter, two disinterested persons, residents of the State of Ohio, who, after having been duly sworn to assess the value thereof, did under their hands return to me their verdict, in writing, that they find the value of said property to amount to the sum of $38,592, as per their appraisal herewith returned; and I delivered said property to the plaintiff in this suit, he having first entered into bond with good and responsible freeholders, residents of the State of Ohio, in the sum of $115,776, as per bond herewith returned. I also summoned the said George C. Dodge, to be and appear as commanded in this writ, by handing to him, on the 28th of March, 1853, a true copy of the same.

G. A. JONES, *Marshal O. district*,
By ERASTUS SMITH, *deputy*.

The appraisement and bond referred to in the foregoing return are in the words and of the tenor following, to wit:

Appraisement.

We, the undersigned, two disinterested persons of the city of Cleveland, in the county of Cuyahoga, and State of Ohio, having been duly sworn by Erastus Smith, a deputy marshal of the United States of America, within and for the district of Ohio, to assess the value of the property seized by virtue of a writ of replevin, issued by the clerk of the circuit court of the United States, within and for said district of Ohio, at the suit of John G. Deshler, a resident and citizen of the State of New York, against George C. Dodge, a resident and citizen of the State of Ohio, do upon actual view assess the value thereof, as follows:

A quantity of bank bills of various denominations, consisting of fives, tens, twenties and fifties, and given for the payment, in the aggregate, of the sum of ten thousand five hundred and eighty dollars, being the same bank bills taken by the said George C. Dodge, from the City Bank of Cleveland, on the 26th day of March, 1853. $10,580 00

Also, another quantity of bank bills of various denominations, consisting of ones, twos, threes, fours, fives, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of seven thousand nine hundred and sixty-five dollars, being the same bank bills taken by the said George C. Dodge, from the Merchants' Bank of Cleveland, on the 26th day of March, A. D. 1853. 7,965 00

Also, another quantity of bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of nine thousand two hundred and sixteen dollars, being the same bank bills taken by the said George C. Dodge, from the Canal Bank of Cleveland, on the 26th day of March, A. D. 1853. 9,216 00

Also, another quantity of bank bills of various denominations, consisting of ones, 2, 3, 5, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of eleven thousand two hundred and twenty dollars, being the same bank bills taken by the said George C. Dodge, from the Commercial Bank of Cleveland, on the 26th day of March, A. D. 1853. 11,220 00

$38,981 00

Deduct one per cent. to make the above equal to coin, 389 00

$38,592 00

Witness our hands, this 26th day of March, A. D. 1853.

T. C. SEVERANCE,
J. F. TAINTER.

I do hereby certify, that the above named Theodine C. Severance and Jeru F. Tainter, two disinterested persons of the city of Cleveland, in the county of Cuyahoga, and State of Ohio, were duly summoned and sworn by me, to truly assess the value of the above described property, and made appraisement thereof as above set forth, this 26th day of March, A. D. 1853, at Cleveland, in the State of Ohio.

G. A. JONES, *Marshal of Ohio district*,
By ERASTUS SMITH, *deputy*.

Bond.

Know all men by these presents, that we, John G. Deshler, of Buffalo, in the State of New York, and John Gillett, Henry W. Clark, and Philo Chamberlin, and N. E. Crittenden, of the county of Cuyahoga, in the State of Ohio, are held and firmly bound unto George C. Dodge, in the penal sum of one hundred fifteen thousand seven hundred seventy-six dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals, and dated this 26th day of March, A. D. 1853.

The condition of the above obligation is such, that whereas the said John G. Deshler, on the 26th day of March, A. D. 1853, sued out of the circuit court of the United States, within and for the district of Ohio, a writ of replevin against the said George C. Dodge, for the following goods and chattels, to wit: A quantity of bank bills of various denominations, consisting of fives, tens, twenties and fifties, and given for the payment in the aggregate of the sum of ten thousand five hundred and eighty dollars, being the same bank bills taken by the said George C. Dodge, from the City Bank of Cleveland, on the 26th day of March, 1853. Also, another quantity of bank bills of various denominations, consisting of ones, twos, threes, fours, fives, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of

seven thousand nine hundred and sixty-five dollars, being the same bank bills taken by the said George C. Dodge from the Merchants' Bank of Cleveland, on the 26th day of March, A. D. 1853. Also, another quantity of bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of nine thousand two hundred and sixteen dollars, being the same bank bills taken by the said George C. Dodge from the Canal Bank of Cleveland, on the 26th day of March, A. D. 1853. Also, another quantity of bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties and hundreds, and given for the payment in the aggregate of the sum of eleven thousand two hundred and twenty dollars, being the same bank bills taken by the said George C. Dodge from the Commercial Bank of Cleveland, on the 26th day of March, 1853; and which is returnable at the next term of said court.

Now, if the said John G. Deshler shall appear at the next term of said court, and prosecute said suit to effect, and pay all costs and damages which shall be awarded against him, then this obligation shall be void; otherwise to be and remain in full force and virtue.

JOHN G. DESHLER, [SEAL.]
JONA. GILLETT, [SEAL.]
HENRY W. CLARK, [SEAL.]
PHILO CHAMBERLIN, [SEAL.]
N. E. CRITTENDEN. [SEAL.]

And thereupon came the said John G. Deshler, by his attorneys aforesaid, and also the said George C. Dodge, by his attorney, and files in court here the following motion, to wit:

Motion.

UNITED STATES OF AMERICA,
District of Ohio, ss.

In the circuit court of the United States, April term, A. D. 1853.

JONH G. DESHLER
vs. } Replevin.
GEORGE C. DODGE.

And now comes the said George C. Dodge, by R. P. Spalding, his attorney, and moves the court for a rule on the plaintiff to show cause during the present term why the said suit should not stand dismissed, for all and singular the reasons following, to wit:

1st. Because there is no sufficient affidavit filed by plaintiff as a predicate for the writ of replevin.

2d. Because it does not comport with sound public policy, that any portion of the revenue of the State should be arrested, at the instance of the tax payers, or other person for his benefit, and taken from the hands of the collector, through the instrumentality of the writ of replevin.

3d. Because the several bank bills in the writ specified were assigned to the plaintiff by said several banks in the city of Cleveland, for the sole purpose of instituting suit in this court.

4th. Because said assignment from said banks to said John G. Deshler was colorable merely, and operates as a fraud upon the act of Congress of September 24th, 1789, establishing the judicial courts of the United States.

5th. Because this court is debarred taking jurisdiction of this case by a provision contained in the 11th section of said act of Congress of September 24, 1789, in the words following: "Nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of any assignee, unless a suit might have been prosecuted in such court, to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange." It being admitted, for the purposes of this motion, that the said John G. Deshler derived all his right to said bank notes from an assignment in writing made to him by the Commercial Bank, the Merchants' Bank, the City Bank, and the Canal Bank of Cleveland, all corporate bodies in the State of Ohio, after the seizure of the said bank bills, by the said George C. Dodge, as treasurer of Cuyahoga county, to satisfy sundry taxes assessed against said banks.

R. P. SPALDING,
Attorney for defendant.

And thereupon, on motion of Mr. Spalding, attorney for defendant, it is ordered by the court, that the plaintiff show cause by Monday, the 25th day of the present month of April, why this suit shall not be dismissed for reasons in said motion set forth.

And afterwards, in this same term of April, to wit, Thursday, May 12th, in the year of our Lord one thousand eight hundred and fifty-three, this cause came on to be heard on the motion heretofore filed, and the arguments of counsel being heard, and the court not being fully advised what judgment to give, take the same under advisement.

And afterwards, to wit, on the tenth day of August, in the year of our Lord one thousand eight hundred and fifty-three, the following entry was made on the journal of said court, pursuant to the order of the honorable John McLean, judge of said court, to wit:

JOHN G. DESHLER, plaintiff,
vs.
GEORGE C. DODGE, defendant. } Replevin.

This cause was argued at the last term, and the case was taken under advisement, the decision to be certified and entered as of the last term. The court overrule the motion pro forma, and permit the defendant to set up the same matter, by plea, which is to be filed on or before the first day of the next term.

And afterwards, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three, the said plain-

tiff, by his attorneys aforesaid, filed in the office of the clerk of the court aforesaid his declaration against the said defendant in the premises aforesaid, in form following, to wit:

Declaration.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Ohio.

Vacation after April term, 1853.

John G. Deshler, who is a citizen and resident of the State of New York, complains of George C. Dodge, who is a citizen and resident of the State of Ohio, in a plea of replevin for that the defendant, heretofore, to wit, on the 26th day of March, A. D. 1853, at Cleveland, in said district of Ohio, wrongfully and unjustly detained in his possession, and from the plaintiff, the following goods and chattels of the plaintiff, and until the same were replevied by the writ of replevin issued herein, to wit: A quantity of bank bills of various denominations, consisting of fives, tens, twenties, and fifties, and given for the payment in the aggregate of the sum of ten thousand five hundred and eighty dollars, being the same bank bills taken by the said George C. Dodge from the City Bank of Cleveland on the 26th day of March, 1853.

Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fours, fives, tens, twenties, fifties, and hundreds, and given for the payment in the aggregate of the sum of seven thousand nine hundred and sixty-five dollars, being the same bank bills taken by the said George C. Dodge from the Merchants' Bank of Cleveland, on the 26th day of March, 1853.

Also another quantity of bank bills, of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, and given for the payment in the aggregate of the sum of nine thousand two hundred and sixteen dollars, being the same bank bills taken by the said George C. Dodge from the Canal Bank of Cleveland, on the 26th day of March, A. D. 1853.

Also another quantity of bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, and given for the payment in the aggregate of the sum of eleven thousand two hundred and twenty dollars, being the same bank bills taken by the said George C. Dodge from the Commercial Bank of Cleveland, on the 26th day of March, A. D. 1853, all of which bank bills being the subject matter in dispute in this suit, all of the value of the sum of thirty-eight thousand nine hundred and eighty-one dollars, to the damage of the said plaintiff of twenty-five thousand dollars; and thereupon he sues.

H. FOOTE, and
BISHOP, BACKUS & NOBLE,
Plaintiff's attorneys.

And afterwards, to wit, on the 25th day of August, in the year of

our Lord one thousand eight hundred and fifty-three, comes the said defendant by his attorney aforesaid, and files his plea to the declaration of the said plaintiff, in form following, to wit:

Plea.

UNITED STATES OF AMERICA,
7th circuit and district of Ohio, ss.

JOHN G. DESHLER
vs.
GEORGE C. DODGE. } Replevin.—Plea.

In the circuit court U. S.

And the said George C. Dodge, in his own proper person, comes and says, that this court ought not to have or take further cognizance of the action aforesaid, because he says that on the day and year in the said declaration mentioned, to wit, on the twenty-sixth day of March, in the year one thousand eight hundred and fifty-three, he, the said George C. Dodge, was acting as treasurer of the county of Cuyahoga, in the State of Ohio, and as such treasurer on the day and year last mentioned, at Cleveland, in the county of Cuyahoga aforesaid, held in his hands for collection the tax duplicate of said county of Cuyahoga, for the year one thousand eight hundred and fifty-two, upon which tax duplicate sundry large amounts of taxes stood assessed against the several banks in the plaintiff's declaration mentioned, to wit, against the City Bank of Cleveland, the Merchants' Bank of Cleveland, the Canal Bank of Cleveland, and the Commercial Bank of Cleveland; which said taxes, with a large amount of penalty thereon, were then due and unpaid; and it then and there became, and was the official duty of the said George C. Dodge, as such treasurer, to distrain a sufficient amount of bank bills belonging to said banks and in their possession, (respectively,) to satisfy the said taxes and penalties, amounting in the aggregate to a large sum of money, to wit, to the sum of thirty-eight thousand nine hundred and eighty-one dollars. And the said George C. Dodge did in fact, then and there, to wit, on the twenty-sixth day of March, in the year one thousand eight hundred and fifty-three, at the city of Cleveland, in the county of Cuyahoga aforesaid, enter into said banks and take and distrain from them respectively the amount of taxes and penalty as aforesaid, to wit: From the City Bank of Cleveland he took and distrained the sum of ten thousand five hundred and eighty dollars in bank bills of various denominations, consisting of fives, tens, twenties, and fifties, the same being at the time said distress was made the exclusive property of said City Bank of Cleveland. From the Merchants' Bank of Cleveland he took and distrained the sum of seven thousand nine hundred and sixty-five dollars in bank bills of various denominations, consisting of ones, twos, threes, fours, fives, tens, twenties, fifties, and hundreds, the same being at the time said distress

was made the exclusive property of said Merchants' Bank of Cleveland. From the Canal Bank of Cleveland he took and distrained the sum of nine thousand two hundred and sixteen dollars in bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, the same being at the time said distress was made the exclusive property of said Canal Bank of Cleveland. And from the Commercial Bank of Cleveland he took and distrained the sum of eleven thousand two hundred and twenty dollars in bank bills of various denominations, consisting of ones, twos, threes, fives, tens, twenties, fifties, and hundreds, the same being at the time said distress was made the exclusive property of said Commercial Bank of Cleveland. And the said George C. Dodge, having thus, then and there taken and distrained said bank bills, being all and singular the bank bills in the plaintiff's declaration set forth and described, immediately, to wit, on the twenty-sixth day of March, in the year one thousand eight hundred and fifty-three aforesaid, removed said several bank bills from said several banks respectively, to a place of security, to wit, to the vault of the Cleveland Insurance Company, *were* the same were specially deposited by the said George C. Dodge, and where the same in fact remained to the credit of the said George C. Dodge as a special deposit, until they were afterwards seized and taken by force of the writ of replevin issued at the instance of the said John G. Deshler, plaintiff in this suit.

And the said George C. Dodge further saith, that on the same twenty-sixth day of March, A. D. 1853, but after the said George C. Dodge had so as aforesaid distrained, and taken away from the possession and keeping of the said several banks herein before mentioned, the said bank bills above mentioned, and after he had deposited the same for safe-keeping in the vault of the Cleveland Insurance Company in manner aforesaid, the said several banks above mentioned, all of which were incorporated by the laws of the State of Ohio to transact a general banking business in said city of Cleveland, in the county of Cuyahoga aforesaid, and not elsewhere, and all of which in fact were at the time said taxes were assessed, and at the time the said bank bills were so as aforesaid distrained for the payment of said taxes, transacting a general banking business in the city of Cleveland aforesaid, entered into an arrangement with the said John G. Deshler, the plaintiff in this suit, who claims to be a citizen and resident in the State of New York; whereby the said several banks, by written instruments of assignment, bearing date on the said twenty-sixth day of March, A. D. 1853, and executed in behalf of said banks by their cashiers or other agents duly authorized by the directors of the same, sold, assigned, and transferred to the said John G. Deshler, plaintiff in this suit, all and singular the bank bills so as aforesaid taken and distrained by the said George C. Dodge, and which said bank bills were, by the express terms of said several assignments in writing, declared to be then, and at the time of the execution of said several instruments of assignment, in the possession of George C. Dodge, treasurer of the county of Cuyahoga, in the State of Ohio.

And the said George C. Dodge further saith, that before and at the time of the taking and distraining said several bank bills for the payment of said taxes and penalties assessed as aforesaid against said several banks, he, the said John G. Deshler, had no right of property in or claim to the possession of said several bank bills whatsoever, but that all the pretended right, interest, and claim of the said John G. Deshler thereto arose under and by virtue of said several instruments of assignments, executed and delivered long after said bank bills had been taken and distrained by the said George C. Dodge, as treasurer as aforesaid, in satisfaction of the taxes and penalty so due as aforesaid from said banks, and while the said bank bills were on special deposite in the vault of the said Cleveland Insurance Company to the credit of the said George C. Dodge, treasurer as aforesaid. And the said George C. Dodge further saith, that he is a citizen of and resident in the State of Ohio, and was such at the time when this suit was instituted; and that all and singular said banks are corporate bodies of said State of Ohio, and have not now and never had any legal existence except within the limits of said State. And so the said George C. Dodge pleads, and says, that said supposed causes of action are not within the jurisdiction of this court, and this he is ready to verify; whereof he prays judgment whether this court can or will take further cognizance of the action aforesaid.

GEORGE C. DODGE.

STATE OF OHIO, *Cuyahoga county, ss.*

CITY OF CLEVELAND, *August 23d*, 1853.

Before me personally came George C. Dodge, the defendant in the cause of John G. Deshler vs. George C. Dodge, in replevin, now depending in the United States circuit court for the district of Ohio, and made solemn oath that the foregoing plea by him subscribed is true in substance and fact.

[SEAL.] JOHN PACKARD, *Notary public.*

And now, at this day, to wit, on the eighteenth day of October, in the year and at the term of said court first herein aforesaid mentioned, came the parties aforesaid, by their attorneys aforesaid; and thereupon the plaintiff, by his attorneys aforesaid, files in court here his demurrer to the plea of the said defendant, in form following, to wit:

Demurrer.

UNITED STATES OF AMERICA,
Seventh circuit and district of Ohio, ss.

In circuit court.

JOHN G. DESHLER
vs. } In replevin.
GEORGE C. DODGE.

And the said plaintiff says, that the said plea of the said defendant,

and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to show that this court has not jurisdiction of this suit, nor of the causes of action in said declaration set forth; and that he, the said plaintiff, is not bound by the law of the land to answer the same; and this he is ready to verify. Whereupon, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said defendant may answer further to said declaration, &c.

BISHOP, BACKUS & NOBLE,
Plaintiff's attorneys.

And this cause came on to be heard upon the plaintiff's demurrer to the defendant's plea to the jurisdiction of the court, and was argued by counsel; and the court being fully advised in the premises, are of opinion that the said plea of the said George C. Dodge, and the matters therein contained, are sufficient in law to preclude the said John G. Deshler from having and maintaining said action against the said George C. Dodge in this court, and that the court has no jurisdiction of the same.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, clerk of the circuit court of the United States, seventh circuit and district of Ohio, do hereby certify that the foregoing is truly taken and copied from the records of the proceedings of the circuit court aforesaid.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at the city of Columbus, the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-three, and in the 78th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

CIRCUIT COURT OF THE UNITED STATES,
District of Ohio.

JOHN G. DESHLER, a resident and citizen of the State of New York,
vs.
GEORGE C. DODGE, a citizen and resident of the State of Ohio.
} In replevin.

And the above named John G. Deshler now comes and says, that in the record of and proceedings in the cause aforesaid (the said record being the one to which this is attached) there is manifest error, in this, to wit:

First. The court erred in not sustaining the demurrer of said John G. Deshler to the plea of the said George C. Dodge to the jurisdiction of said court, and in holding the plea of said Dodge, and the matters

therein contained, to be sufficient in law to preclude the said Deshler from having and maintaining said action against said Dodge in said court.

Second. The court erred in holding and adjudging that it had no jurisdiction of said action.

Third. The court erred in not sustaining the demurrer of said Deshler, and in not rendering judgment thereon in his favor.

Wherefore said John G. Deshler prays that the judgment aforesaid may be remised, annulled, and held for nothing, and that he may be restored to all things which he has lost by reason thereof.

December 1st, 1853.

HENRY STANSBURY & JESSE P. BISHOP,
Attorneys for John G. Deshler.

THE UNITED STATES OF AMERICA.

Supreme Court of the United States, to George C. Dodge, greeting:

Whereas John G. Deshler obtained the allowance of our writ of error to the circuit court of the United States, for the 7th circuit and district of Ohio directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in an action of replevin, wherein you, the said George C. Dodge, in that action lately recovered against the said John G. Deshler a judgment sustaining your plea therein filed to the jurisdiction of said circuit court, and dismissing his case for want of jurisdiction, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said John G. Deshler we are informed; and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be: You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said Court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 4th day of November, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the

JOHN McLEAN,
Justice Supreme Court United States.